

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND
3 NORTHERN DIVISION

4 UNITED STATES OF AMERICA Criminal No. RDB-07-0244

5 Baltimore, Maryland

6 v.

7 February 20, 2008

8 TIMOTHY CLARIDY,

9 11:00 a.m.

10 Defendant.

11 -----/

12 TRANSCRIPT OF MOTIONS HEARING
13 BEFORE THE HONORABLE RICHARD D. BENNETT
14 UNITED STATES DISTRICT JUDGE

15 APPEARANCES:

16 For the Government: United States Attorney's Office
17 By: PHILIP S. JACKSON, ESQUIRE
18 36 South Charles Street
19 Fourth Floor
20 Baltimore, Maryland 21201

21 For the Defendant: Bates May and Seddiq
22 By: IVAN J. BATES, ESQUIRE
23 10 N. Calvert Street
24 Suite 214
25 Baltimore, Maryland 21202

26 Court Reporter Lisa K. Bankins RMR
27 101 West Lombard Street
28 Room 5515
29 Baltimore, Maryland 21201

30 Proceedings recorded by mechanical stenography,
31 transcript produced by notereading.

1 PROCEEDINGS

2 THE COURT: Mr. Jackson, if you'll call the case,
3 please?

4 MR. JACKSON: For the record, Phil Jackson here on
5 behalf of the government in the case of United States v. Timothy
6 Claridy, Case Number RDB-07-0244 and we're here on the
7 government's motion regarding possible conflict of interest with
8 counsel for the defense.

9 THE COURT: And for the defense?

10 MR. BATES: Good morning, Your Honor. Ivan Bates on
11 behalf of Timothy Claridy who is standing to the right of me.

12 THE COURT: Good morning, Mr. Bates, and good morning,
13 Mr. Claridy.

14 THE DEFENDANT: Good morning.

15 THE COURT: This case is set in for trial on the
16 superseding indictment. It's scheduled for trial on March 17th.
17 Correct, counsel?

18 MR. BATES: That's correct.

19 MR. JACKSON: Yes, Your Honor.

20 THE COURT: Okay. Paper Number 40 is the government's
21 motion for attorney inquiry. Mr. Claridy is represented by Mr.
22 Bates here in court this morning. Mr. Bates also represented
23 David Ellerby which is a criminal matter now pending before Judge
24 Blake of this court. Is that correct, Mr. Bates?

25 MR. BATES: Actually, Your Honor, I just filed notice

1 to withdraw my appearance which was granted yesterday. I did up
2 until yesterday.

3 THE COURT: All right. So you did represent Mr.
4 Ellerby up until yesterday. And that matter is scheduled to
5 proceed to trial on March 3rd. Based on the evidence developed
6 in the Ellerby investigation, the government has represented
7 there was a criminal relationship between Mr. Claridy and Mr.
8 Ellerby which was described by one witness as a partnership
9 involving distribution of narcotics and the government has noted
10 in that vein that evidence seized from the location of Ellerby's
11 activities was a photograph depicting Mr. Claridy and Mr. Ellerby
12 as well as others was found. Among the items of evidence,
13 there's also indication of cell phone calls between Mr. Ellerby
14 and Mr. Claridy. And in light of Mr. Bates' representation of
15 both Ellerby and Claridy, the government has requested that this
16 Court hold a hearing to inquire as to whether a conflict exists
17 that prevents Mr. Bates from representing Mr. Claridy in the
18 instant case. That is Paper Number 40. That's a pending motion
19 and it was filed on February the 8th. Then I have another motion
20 filed which was in fact in filed yesterday. This is Paper Number
21 41 in which Mr. Bates has come forward and pursuant to local Rule
22 201 moved to disqualify his appearance of counsel for the
23 defendant, Timothy Claridy, for the reasons that on or before
24 February 5, 2008, he was informed by Assistant United States
25 Attorney Tonya Kowitz of a possible conflict of interest

1 involving a defendant in her case and Mr. Claridy and Mr. Bates
2 has made reference to the defendant, David Ellerby, in the case
3 of Criminal Number CCB-07-0064 in this court. In light of this,
4 Mr. Bates has represented that he researched the issues and has
5 noted that it would be difficulty to represent either of the
6 defendants given that situation. Correct, Mr. Bates?

7 MR. BATES: That is correct, Your Honor.

8 THE COURT: All right. So I have a pending motion for
9 attorney inquiry and I have a pending motion to withdraw
10 appearance of counsel. So it doesn't appear that we have any
11 issue to resolve. I'm prepared to grant both motions for the
12 simple reason that Mr. Bates has represented both Mr. Claridy and
13 Mr. Ellerby. It would put him in a very untenable position with
14 respect to any cross-examination of Mr. Ellerby. In the matter
15 of representing both Mr. Bates and Mr. Claridy, it would put him
16 in a difficult situation if he were to try to represent Mr.
17 Claridy and cross-examine Mr. Ellerby. So the situation is that
18 he has properly withdrawn his appearance from both cases to avoid
19 any conflict of interest.

20 What I would ask counsel to do is to prepare a Speedy
21 Trial Act order. And Mr. Jackson, if you'll prepare one.

22 Mr. Bates, I'm going to grant your motion to withdraw. A speedy
23 trial motion will have to be prepared because this case is
24 scheduled to go to trial on March the 17th and there's going to
25 have to be excludable time. We will trial to set this case in

1 for trial within 70 days of today's date and I'm going to try to
2 get some dates from you, Mr. Jackson, in terms of a potential
3 trial date of the case, but I really can't do that -- I'm going
4 to set a trial date now and whatever attorney comes into the case
5 will have to abide by that under the Speedy Trial Act unless
6 there's a further waiver. Now, Mr. Bates, are you privately
7 retained or court appointed?

8 MR. BATES: I was privately retained. I will inform
9 the Court, Your Honor, I have -- once I informed Mr. Claridy
10 about this, I spoke with another attorney. That other attorney
11 at this point in time is willing it appears to go ahead and enter
12 their appearance. However, I first need to be out of the case.

13 THE COURT: Who is the other attorney?

14 MR. BATES: His name is Robert Cole.

15 THE COURT: Okay.

16 MR. BATES: Your Honor, I've spoken to him. I spoke to
17 Mr. Claridy's family and I have already received a letter from
18 Mr. Claridy asking me to give the file to his new attorney.

19 THE COURT: Okay.

20 MR. BATES: And actually, Mr. Cole, his biggest concern
21 was the calendar. He didn't want to necessarily enter his
22 appearance and deal with those issues. I do believe hopefully by
23 Friday, Your Honor, Mr. Cole will hopefully be retained by
24 Mr. Claridy's family. I've already taken the initiative to try
25 to get the two parties together. Mr. Cole just didn't want to go

1 see Mr. Claridy until my appearance is out of it, Your Honor.

2 THE COURT: All right. Okay. Well, what I'm going to
3 do is, I'm going to, there will be excludable time from today's
4 date until certainly, clearly by March 17th because of the fact
5 that we're trying to get new counsel in the case. Mr. Jackson,
6 if you'll submit the proposed order on that?

7 MR. JACKSON: I will, Your Honor.

8 THE COURT: I'm going to schedule a trial date within
9 the spirit of the Speedy Trial Act, 18 United States Code,
10 Section 3161. I'm going to schedule a trial date within seventy
11 days of today's date. So, Ms. West, if you'll look out for ten
12 weeks from today's date?

13 (A discussion regarding scheduling was heard off the
14 record.)

15 THE COURT: All right. The trial in this case will be
16 set for Monday, April the 28th at 9:30. The pretrial conference
17 will be Monday April the 21st at 4:30. If you will give those
18 dates to Mr. Cole, Mr. Bates, I'm going to schedule it in that
19 fashion. Now, Mr. Cole can certainly request an agreed trial
20 date with Mr. Jackson. I'll certainly consider that. But I need
21 to at least schedule this for now within seventy days of today's
22 date. Now that can be scheduled within sixty-eight days from
23 today's date. And I'll enter a Speedy Trial Act order.

24 MR. BATES: Yes, sir.

25 THE COURT: All right. Anything further from the point

1 of view of the government, Mr. Jackson?

2 MR. JACKSON: I'll let Mr. Needleman who represents the
3 co-defendant know of the new date.

4 THE COURT: Yes. I had forgotten that.

5 MR. BATES: I have spoken with Mr. Needleman's office
6 as well and I did inform him of the issue that I did file the
7 motion and his office was also informed that I was going to have
8 a hearing today on that motion.

9 THE COURT: All right. And Mr. Jackson, if you would
10 indicate to Mr. Needleman that I know he's going to be available
11 on Monday, April 28th.

12 MR. JACKSON: Yes, Your Honor.

13 THE COURT: That I know he's busy. But I just have
14 full confidence of his ability to be here for the trial of the
15 case. Tell him I send my regards and I know he'll be here and
16 I'll be very, very surprised if I were to get a request that he
17 couldn't be here on April 28th. I'm confident that any other
18 matters that he has will be resolved and you tell him I said
19 hello. So we're all smiling here in the courtroom. We'll try
20 this case on Monday, April the 28th. So thank you, counsel. And
21 again, nice to see you.

22 MR. BATES: Thank you Your Honor.

23 (Proceedings concluded.)
24
25

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2 I, LISA K. BANKINS, certify that the foregoing is
3 a correct transcript from the record of
4 proceedings in the above-entitled matter.

5 _____
6 Signature of Court Reporter/
7 Transcriber

_____ Date

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